

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1729

Introduced by Assembly Member Houston

February 22, 2005

An act to amend Sections 10232.4, 10233, and 10238 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1729, as amended, Houston. Real estate.

(1) Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers and makes a violation of its provisions a crime. Existing law requires a real estate broker who is performing certain acts in negotiating a loan to be secured by a lien on real property, or performing certain acts in negotiating the purchase of a real property sales contract or a note secured by a deed of trust, to provide the prospective lender or the prospective purchaser, as the case may be, with a specified disclosure statement. Existing law sets forth various exceptions to this requirement.

This bill would revise the requirements for those exceptions.

(2) Existing law requires a real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract to comply with specified requirements, including the obtaining of a written authorization from the borrower, lender, or owner of the note or contract that is included within the terms of a written servicing agreement.

This bill would exempt from that requirement certain provisions requiring the trust accounts of a broker or person becoming the servicing agent of those notes or interests that are sold to be inspected by an independent certified public accountant.

(3) Existing law requires a real estate broker to file certain information with the commissioner relative to the conducting of a transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction. Existing law requires the notes or interests of the purchasers to be identical in their underlying terms but allows different selling prices for interests to the extent the differences are reasonably related to changes in the market value of the loan occurring between the sales of the interests. Existing law requires the interest of each purchaser to be recorded.

This bill would specify the recording procedures in this regard.

(4) Because a violation of the bill would be a crime, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10232.4 of the Business and
2 Professions Code is amended to read:
3 10232.4. (a) In making a solicitation to a particular person
4 and in negotiating with that person to make a loan secured by
5 real property or to purchase a real property sales contract or a
6 note secured by a deed of trust, a real estate broker shall deliver
7 to the person solicited the applicable completed statement
8 described in Section 10232.5 as early as practicable before he or
9 she becomes obligated to make the loan or purchase and, except
10 as provided in subdivision (c), before the receipt by or on behalf
11 of the broker of any funds from that person. The statement shall
12 be signed by the prospective lender or purchaser and by the real
13 estate broker, or by a real estate salesperson licensed to the
14 broker, on the broker's behalf. When so executed, an exact copy
15 shall be given to the prospective lender or purchaser, and the

1 broker shall retain a true copy of the executed statement for a
2 period of three years.

3 (b) The requirement of delivery of a disclosure statement
4 pursuant to subdivision (a) shall not apply with respect to the
5 following persons:

6 (1) The prospective purchaser of a security offered under
7 authority of a permit issued pursuant to applicable provisions of
8 the Corporate Securities Law of 1968 (Division 1 (commencing
9 with Section 25000) of Title 4 of the Corporations Code) that
10 require that each prospective purchaser of a security be given a
11 prospectus or other form of disclosure statement approved by the
12 department issuing the permit.

13 (2) The seller of real property who agrees to take back a
14 promissory note of the purchaser as a method of financing all or
15 a part of the purchase of the property.

16 (3) The prospective purchaser of a security offered pursuant to
17 and in accordance with a regulation duly adopted by the
18 Commissioner of Corporations granting an exemption from
19 qualification under the Corporate Securities Law of 1968 for the
20 offering if one of the conditions of the exemption is that each
21 prospective purchaser of the security be given a disclosure
22 statement prescribed by the regulation before the prospective
23 purchaser becomes obligated to purchase the security.

24 (4) A prospective lender or purchaser, if that lender or
25 purchaser is any of the following:

26 (A) The United States or any state, district, territory, or
27 commonwealth thereof, or any city, county, city and county,
28 public district, public authority, public corporation, public entity,
29 or political subdivision of a state, district, territory, or
30 commonwealth of the United States, or any agency or corporate
31 or other instrumentality of any one or more of the foregoing,
32 including the Federal National Mortgage Association, the
33 Government National Mortgage Association, the Federal Home
34 Loan Mortgage Corporation, the Federal Housing
35 Administration, and the Veteran's Administration.

36 (B) Any bank or subsidiary thereof, bank holding company or
37 subsidiary thereof, trust company, savings bank or savings and
38 loan association or subsidiary thereof, savings bank or savings
39 association holding company or subsidiary thereof, credit union,
40 industrial bank or industrial loan company, personal property

1 broker, commercial finance lender, consumer finance lender, or
2 insurance company doing business under the authority of, and in
3 accordance with, the laws of this state, any other state, or of the
4 United States relating to banks, trust companies, savings banks or
5 savings associations, credit unions, industrial banks or industrial
6 loan companies, commercial finance lenders, or insurance
7 companies, as evidenced by a license, certificate, or charter
8 issued by the United States or any state, district, territory, or
9 commonwealth of the United States.

10 (C) Trustees of pension, profitsharing, or welfare fund, if the
11 pension, profitsharing, or welfare fund has a net worth of not less
12 than fifteen million dollars (\$15,000,000).

13 (D) Any corporation with outstanding securities registered
14 under Section 12 of the Securities Exchange Act of 1934 or any
15 wholly owned subsidiary of that corporation.

16 (E) Any syndication or other combination of any of the entities
17 specified in subparagraph (A), (B), (C), or (D) which is
18 organized to purchase the promissory note.

19 (F) A licensed real estate broker engaging in the business of
20 selling all or part of the loan, note, or contract to a lender or
21 purchaser to whom no disclosure is required pursuant to this
22 subdivision.

23 (G) A licensed residential mortgage lender or servicer when
24 acting under the authority of that license.

25 (c) When the broker has custody of funds of a prospective
26 lender or purchaser which were received and are being
27 maintained with the express permission of the owner and in
28 accordance with law, and the broker retains the funds in an
29 escrow depository or a trust fund account pending receipt of the
30 owner's express written instructions to disburse the funds for a
31 loan or purchase, the broker shall cause the disclosure statement
32 to be delivered to the owner and shall obtain the owner's written
33 consent to the proposed disbursement before making the
34 disbursement. Unless the broker has a written agreement with the
35 owner as provided in Section 10231.1, the broker shall transmit
36 to the owner not later than 25 days after receipt, all funds then in
37 the broker's custody for which the owner has not given written
38 instructions authorizing disbursement.

39 SEC. 2. Section 10233 of the Business and Professions Code
40 is amended to read:

1 10233. A real estate licensee who undertakes to service a
2 promissory note secured directly or collaterally by a lien on real
3 property or a real property sales contract shall comply with each
4 of the following requirements:

5 (a) The licensee shall have a written authorization from the
6 borrower, the lender, or the owner of the note or contract, that is
7 included within the terms of a written servicing agreement that
8 satisfies the requirements of paragraphs (1), (2), (4), and (5) of
9 subdivision (k) of Section 10238.

10 (b) The licensee shall provide the lender or the owner of the
11 note or contract with at least the following accountings:

12 (1) An accounting of the unpaid principal balance at the end of
13 each year.

14 (2) An accounting of collections and disbursements received
15 and made during each year.

16 (3) Each accounting required under this subdivision shall
17 identify the person who holds the original note or contract and
18 the deed of trust evidencing and securing the debt or obligation
19 for which the accounting has been provided.

20 (c) The licensee shall provide to the lender or the owner of the
21 note or contract written notification within 15 days of the
22 occurrence of any of the following events:

23 (1) The recording of a notice of default.

24 (2) The recording of a notice of trustee's sale.

25 (3) The receipt of any payment constituting an amount greater
26 than or equal to five monthly payments, together with a request
27 for partial or total reconveyance of the real property, in which
28 case the notice shall also indicate any further transfer or delivery
29 instructions.

30 (4) The delinquency of any installment or other obligation
31 under the note or contract for over 30 days.

32 SEC. 3. Section 10238 of the Business and Professions Code
33 is amended to read:

34 10238. (a) A notice in the following form and containing the
35 following information shall be filed with the commissioner
36 within 30 days after the first transaction and within 30 days of
37 any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10237 of the Business and Professions Code.

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10237:

2. Broker license identification number: _____

3. List the month the fiscal year ends: _____

4. Broker's telephone number: _____

5. Firm name (if different from "1"):

6. Street address (main location):

City State ZIP Code
and
Street

7. Mailing address (if different from "6"):

8. Servicing agent: Identify by name, address, and telephone number

the person or entity who will act as the servicing agent in transactions pursuant to Section 10237 (including the undersigned

Broker if that is the case):

9. Total number of multilender notes arranged: _____

10. Total number of interests sold to investors on the
multilender's notes: _____

11. Inspection of trust account (before answering this question,
review
the provisions of paragraph (3) of subdivision (k) of Section
10238).

CHECK ONLY ONE OF THE FOLLOWING:

() The undersigned Broker is (or expects to be) required to file
reports

of inspection of its trust account(s) with the Real Estate
Commissioner pursuant to paragraph (3) of subdivision (k) of
Section
10238.

Amount of Multilender Payments Collected Last Fiscal Quarter: ____

Total Number of Investors Due Payments Last Fiscal Quarter: ____

() The undersigned Broker is NOT (or does NOT expect to be)
required to
file reports of inspection of its trust account(s) with the Real
Estate

Commissioner pursuant to paragraph (3) of subdivision (k) of
Section 10238.

12. Signature. The contents of this notice are true and correct.

Date Type Name of Broker

Signature of Broker or of Designated Officer of
Corporate Broker

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE
BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE
IN THE INFORMATION REQUIRED TO BE SET FORTH
HEREIN.

(b) A broker or person who becomes the servicing agent for
notes or interest sold pursuant to this article, upon which
payments due during any period of three consecutive months in

1 the aggregate exceed one hundred twenty-five thousand dollars
2 (\$125,000) or the number of persons entitled to the payments
3 exceeds 120, shall file the notice required by subdivision (a) with
4 the commissioner within 30 days after becoming the servicing
5 agent.

6 (c) All advertising employed for transactions under this article
7 shall show the name of the broker and comply with Section
8 10235 and Sections 260.302 and 2848 of Title 10 of the
9 California Code of Regulations. Brokers and their agents are
10 cautioned that a reference to a prospective investor that a
11 transaction is conducted under this article may be deemed
12 misleading or deceptive if this representation may reasonably be
13 construed by the investor as an implication of merit or approval
14 of the transaction.

15 (d) Each parcel of real property directly securing the notes or
16 interests is located in this state, the note or notes are not by their
17 terms subject to subordination to any subsequently created deed
18 of trust upon the real property, and the note or notes are not
19 promotional notes secured by liens on separate parcels of real
20 property in one subdivision or in contiguous subdivisions. For
21 purposes of this subdivision, a promotional note means a
22 promissory note secured by a trust deed, executed on unimproved
23 real property or executed after construction of an improvement of
24 the property but before the first purchase of the property as so
25 improved, or executed as a means of financing the first purchase
26 of the property as so improved, that is subordinate, or by its
27 terms may become subordinate, to any other trust deed on the
28 property. However, the term “promotional note” does not include
29 either of the following:

30 (1) A note that was executed in excess of three years prior to
31 being offered for sale.

32 (2) A note secured by a first trust deed on real property in a
33 subdivision that evidences a bona fide loan made in connection
34 with the financing of the usual cost of the development in a
35 residential, commercial, or industrial building or buildings on the
36 property under a written agreement providing for the
37 disbursement of the loan funds as costs are incurred or in relation
38 to the progress of the work and providing for title insurance
39 ensuring the priority of the security as against mechanic’s and
40 materialmen’s liens or for the final disbursement of at least 10

1 percent of the loan funds after the expiration of the period for the
2 filing of mechanic's and materialmen's liens.

3 (e) The notes or interests are sold by or through a real estate
4 broker, as principal or agent. At the time the interests are
5 originally sold or assigned, neither the broker nor an affiliate of
6 the broker shall have an interest as owner, lessor, or developer of
7 the property securing the loan, or any contractual right to acquire,
8 lease, or develop the property securing the loan. This provision
9 does not prohibit a broker from conducting the following
10 transactions if, in either case, the disclosure statement furnished
11 by the broker pursuant to subdivision (l) discloses the interest of
12 the broker or affiliate in the transaction and the circumstances
13 under which the broker or affiliate acquired the interest:

14 (1) A transaction in which the broker or an affiliate of the
15 broker is acquiring the property pursuant to a foreclosure under,
16 or sale pursuant to, a deed of trust securing a note for which the
17 broker is the servicing agent or that the broker sold to the holder
18 or holders.

19 (2) A transaction in which the broker or an affiliate of the
20 broker is reselling from inventory property acquired by the
21 broker pursuant to a foreclosure under, or sale pursuant to, a deed
22 of trust securing a note for which the broker is the servicing
23 agent or that the broker sold to the holder or holders.

24 (f) (1) The notes or interests shall not be sold to more than 10
25 persons, each of whom meets one or both of the qualifications of
26 income or net worth set forth below and signs a statement, which
27 shall be retained by the broker for four years, conforming to the
28 following:

29
30 Transaction Identifier: _____

31 Name of Purchaser: _____ Date: _____

32 Check either one of the following, if true:

33 () My investment in the transaction does not exceed 10% of my net worth,
34 exclusive of home, furnishings, and automobiles.

35
36 () My investment in the transaction does not exceed 10% of my adjusted
37 gross income for federal income tax purposes for my last tax year or, in the
38 alternative, as estimated for the current year.

39 _____
40 Signature

1 (2) The number of offerees shall not be considered for the
2 purposes of this section.

3 (3) A husband and wife and their dependents, and an
4 individual and his or her dependents, shall be counted as one
5 person.

6 (4) A retirement plan, trust, business trust, corporation, or
7 other entity that is wholly owned by an individual and the
8 individual's spouse or the individual's dependents, or any
9 combination thereof, shall not be counted separately from the
10 individual, but the investments of these entities shall be
11 aggregated with those of the individual for the purposes of the
12 statement required by paragraph (1). If the investments of any
13 entities are required to be aggregated under this subdivision, the
14 adjusted gross income or net worth of these entities may also be
15 aggregated with the net worth, income, or both, of the individual.

16 (5) The "institutional investors" enumerated in subdivision (i)
17 of Section 25102 or subdivision (c) of Section 25104 of the
18 Corporations Code, or in a rule adopted pursuant thereto, shall
19 not be counted.

20 (6) A partnership, limited liability company, corporation, or
21 other organization that was not specifically formed for the
22 purpose of purchasing the security offered in reliance upon this
23 exemption from securities qualification is counted as one person.

24 (g) The notes or interests of the purchasers shall be identical in
25 their underlying terms, including the right to direct or require
26 foreclosure, rights to and rate of interest, and other incidents of
27 being a lender, and the sale to each purchaser pursuant to this
28 section shall be upon the same terms, subject to adjustment for
29 the face or principal amount or percentage interest purchased and
30 for interest earned or accrued. This subdivision does not preclude
31 different selling prices for interests to the extent that these
32 differences are reasonably related to changes in the market value
33 of the loan occurring between the sales of these interests. The
34 interest of each purchaser shall be recorded *pursuant to*
35 *subdivisions (a) to (c), inclusive, of Section 10234.*

36 (h) (1) Except as provided in paragraph (2), the aggregate
37 principal amount of the notes or interests sold, together with the
38 unpaid principal amount of any encumbrances upon the real
39 property senior thereto, shall not exceed the following
40 percentages of the current market value of each parcel of the real

property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

- (A) Single-family residence, owner occupied 80%
- (B) Single-family residence, not owner occupied 75%
- (C) Commercial and income-producing properties 65%
- (D) Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel..... 65%
- (E) Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development 50%
- (F) Other real property 35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision ~~(k)~~ (l).

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the notes or interests, shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(4) For construction or rehabilitation loans, the term "current market value" may be deemed to be the value of the completed project if the following safeguards are met:

(A) An independent neutral third-party escrowholder is used for all deposits and disbursements.

(B) The loan is fully funded, with the entire loan amount to be deposited in escrow prior to recording of the deed or deeds of trust.

(C) A comprehensive, detailed, draw schedule is used to ensure proper and timely disbursements to allow for completion of the project.

(D) The disbursement draws from the escrow account are based on verification from an independent qualified person who certifies that the work completed to date meets the related codes and standards and that the draws were made in accordance with the construction contract and draw schedule. For purposes of this subparagraph, "independent qualified person" means a person who is not an employee, agent, or affiliate of the broker and who is a licensed architect, general contractor, structural engineer, or active local government building inspector acting in his or her official capacity.

(E) An appraisal is completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(F) In addition to the transaction documentation required by subdivision (i), the documentation shall include a detailed description of actions that may be taken in the event of a failure to complete the project, whether that failure is due to default, insufficiency of funds, or other causes.

1 (G) The entire amount of the loan does not exceed two million
2 five hundred thousand dollars (\$2,500,000).

3 (5) If a note or an interest will be secured by more than one
4 parcel of real property, for the purpose of determining the
5 maximum amount of the note or interest, each security property
6 shall be assigned a portion of the note or interest which shall not
7 exceed the percentage of current market value determined by,
8 and in accordance with, the provisions of paragraphs (1) and (2).

9 (i) The documentation of the transaction shall require that (1)
10 a default upon any interest or note is a default upon all interests
11 or notes and (2) the holders of more than 50 percent of the
12 recorded beneficial interests of the notes or interests may govern
13 the actions to be taken on behalf of all holders in accordance with
14 Section 2941.9 of the Civil Code in the event of default or
15 foreclosure for matters that require direction or approval of the
16 holders, including designation of the broker, servicing agent, or
17 other person acting on their behalf, and the sale, encumbrance, or
18 lease of real property owned by the holders resulting from
19 foreclosure or receipt of a deed in lieu of foreclosure. The terms
20 called for by this subdivision may be included in the deed of
21 trust, in the assignment of interests, or in any other
22 documentation as is necessary or appropriate to make them
23 binding on the parties.

24 (j) (1) The broker shall not accept any purchase or loan funds
25 or other consideration from a prospective lender or purchaser, or
26 directly or indirectly cause the funds or other consideration to be
27 deposited in an escrow or trust account, except as to a specific
28 loan or note secured by a deed of trust that the broker owns, is
29 authorized to negotiate, or is unconditionally obligated to buy.

30 (2) All funds received by the broker from the purchasers or
31 lenders shall be handled in accordance with Section 10145 for
32 disbursement to the persons thereto entitled upon recordation of
33 the interests of the purchasers or lenders in the note and deed of
34 trust. No provision of this article shall be construed as modifying
35 or superseding applicable law regulating the escrowholder in any
36 transaction or the handling of the escrow account.

37 (3) The books and records of the broker or servicing agent, or
38 both, shall be maintained in a manner that readily identifies
39 transactions under this article and the receipt and disbursement of
40 funds in connection with these transactions.

(4) If required by paragraph (3) of subdivision (k), the review by the independent certified public accountant shall include a sample of transactions, as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (k), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this article with respect to the handling and distribution of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of the following: (A) three sales made or 5 percent of the sales made pursuant to this article during the period for which the examination is conducted, whichever is greater, and (B) 10 payments processed or 2 percent of payments processed under this article during the period for which the examination is conducted, whichever is greater.

(5) For the purposes of this subdivision, the transaction that constitutes a “sale” is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this article, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a “payment,” for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The accountant shall inspect for compliance with the following specific provisions of this section: paragraphs (1), (2), and (3) of subdivision (j) and paragraphs (1) and (2) of subdivision (k).

(6) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in accordance with this section, listing the sales and the payments examined, specifying the nature of the

deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(k) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under this chapter, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this article. The agreement shall require all of the following:

(1) (A) That payments received on the note or notes be deposited immediately to a trust account maintained in accordance with this section and with the provisions for trust accounts of licensed real estate brokers contained in Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

(B) That payments deposited pursuant to subparagraph (A) shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received.

(2) That payments received on the note or notes shall be transmitted to the purchasers or lenders pro rata according to their respective interests within 25 days after receipt thereof by the agent. If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is

1 received. However, this article does not authorize the broker,
2 servicing agent, or any other person to issue, or to engage in any
3 practice constituting, any guarantee or to engage in the practice
4 of advancing payments on behalf of the borrower.

5 (3) If the broker or person who is or becomes the servicing
6 agent for notes or interests sold pursuant to this article upon
7 which the payments due during any period of three consecutive
8 months in the aggregate exceed one hundred twenty-five
9 thousand dollars (\$125,000) or the number of persons entitled to
10 the payments exceeds 120, the trust account or accounts of that
11 broker or affiliate shall be inspected by an independent certified
12 public accountant at no less than three-month intervals during the
13 time the volume is maintained. Within 30 days after the close of
14 the period for which the review is made, the report of the
15 accountant shall be forwarded as provided in paragraph~~(5)~~ (6) of
16 subdivision (j). If the broker is required to file an annual report
17 pursuant to subdivision (o) or pursuant to Section 10232.2, the
18 quarterly report pursuant to this subdivision need not be filed for
19 the last quarter of the year for which the annual report is made.
20 For the purposes of this subdivision, an affiliate of a broker is
21 any person controlled by, controlling, or under common control
22 with the broker.

23 (4) Unless the servicing agent will receive notice pursuant to
24 Section 2924b of the Civil Code, the servicing agent shall file a
25 request for notice of default upon any prior encumbrances and
26 promptly notify the purchasers or lenders of any default on the
27 prior encumbrances or on the note or notes subject to the
28 servicing agreement.

29 (5) The servicing agent shall promptly forward copies of the
30 following to each purchaser or lender:

31 (A) Any notice of trustee sale filed on behalf of the purchasers
32 or lenders.

33 (B) Any request for reconveyance of the deed of trust received
34 on behalf of the purchasers or lenders.

35 (I) The broker shall disclose in writing to each purchaser or
36 lender the material facts concerning the transaction on a
37 disclosure form adopted or approved by the commissioner
38 pursuant to Section 10232.5, subject to the following:

39 (1) The disclosure form shall include a description of the terms
40 upon which the note and deed of trust are being sold, including

1 the terms of the undivided interests being offered therein,
2 including the following:

3 (A) In the case of the sale of an existing note:

4 (i) The aggregate sale price of the note.

5 (ii) The percent of the premium over or discount from the
6 principal balance plus accrued but unpaid interest.

7 (iii) The effective rate of return to the purchasers if the note is
8 paid according to its terms.

9 (iv) The name and address of the escrowholder for the
10 transaction.

11 (v) A description of, and the estimated amount of, each cost
12 payable by the seller in connection with the sale and a description
13 of, and the estimated amount of, each cost payable by the
14 purchasers in connection with the sale.

15 (B) In the case of the origination of a note:

16 (i) The name and address of the escrowholder for the
17 transaction.

18 (ii) The anticipated closing date.

19 (iii) A description of, and the estimated amount of, each cost
20 payable by the borrower in connection with the loan and a
21 description of, and the estimated amount of, each cost payable by
22 the lenders in connection with the loan.

23 (C) In the case of a transaction involving a note or interest
24 secured by more than one parcel of real property, in addition to
25 the requirements of subparagraphs (A) and (B):

26 (i) The address, description, and estimated fair market value of
27 each property securing the loan.

28 (ii) The amount of the available equity in each property
29 securing the loan after the loan amount to be apportioned to each
30 property is assigned.

31 (iii) The loan to value percentage for each property after the
32 loan amount to be apportioned to each property is assigned
33 pursuant to subdivision (h).

34 (2) A copy of the written statement or information contained
35 therein, as required by paragraph (2) of subdivision (h), shall be
36 included in the disclosure form.

37 (3) Any interest of the broker or affiliate in the transaction, as
38 described in subdivision (e), shall be included with the disclosure
39 form.

1 (4) When the particular circumstances of a transaction make
2 information not specified in the disclosure form material or
3 essential to keep the information provided in the form from being
4 misleading, and the other information is known to the broker, the
5 other information shall also be provided by the broker.

6 (5) If more than one parcel of real property secures the notes
7 or interests, the disclosure form shall also fully disclose any risks
8 to investors associated with securing the notes or interests with
9 multiple parcels of real property.

10 (m) The broker or servicing agent shall furnish any purchaser
11 of a note or interest, upon request, with the names and addresses
12 of the purchasers of the other notes or interests in the loan.

13 (n) No agreement in connection with a transaction covered by
14 this article shall grant to the real estate broker, the servicing
15 agent, or any affiliate of the broker or agent the option or election
16 to acquire the interests of the purchasers or lenders or to acquire
17 the real property securing the interests. This subdivision shall not
18 prohibit the broker or affiliate from acquiring the interests, with
19 the consent of the purchasers or lenders whose interests are being
20 purchased, or the property, with the consent of the purchasers or
21 lenders, if the consent is given at the time of the acquisition.

22 (o) Each broker who conducts transactions under this article,
23 or broker or person who becomes the servicing agent for notes or
24 interest sold pursuant to this article, who meets the criteria of
25 paragraph (3) of subdivision (k) shall file with the commissioner
26 an annual report of a review of its trust account. The report shall
27 be prepared and filed in accordance with subdivision (a) of
28 Section 10232.2 and the rules and procedures thereunder of the
29 commissioner. That report shall cover the broker's transactions
30 under this article and, if the broker also meets the threshold
31 criteria set forth in Section 10232, the broker's transactions
32 subject to that section shall be included as well.

33 (p) Each broker conducting transactions pursuant to this
34 article, or broker or person who becomes the servicing agent for
35 notes or interest sold pursuant to this article, who meets the
36 criteria of paragraph (3) of subdivision (k) shall file with the
37 commissioner a report of the transactions that is prepared in
38 accordance with subdivision (c) of Section 10232.2. If the broker
39 also meets the threshold criteria of Section 10232, the report shall
40 include the transactions subject to that section as well. This

1 report shall be confidential pursuant to subdivision (f) of Section
2 10232.2.

3 SEC. 4. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the
8 penalty for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition of a
10 crime within the meaning of Section 6 of Article XIII B of the
11 California Constitution.